REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1 Michael T. Pieja (CA Bar No. 250351)
2 Alan E. Littmann (*pro hac vice*)
   Jennifer Greenblatt (*pro hac vice*)
3 Doug Winnard (CA Bar No. 275420)
   Andrew J. Rima (*pro hac vice*)
4 Emma C. Ross (*pro hac vice*)
   Lauren Abendshien (*pro hac vice*)
5 GOLDMAN ISMAIL TOMASELLI
6 BRENNAN & BAUM LLP
   200 South Wacker Dr., 22nd Floor
7 Chicago, IL 60606
   Tel: (312) 681-6000
8 Fax: (312) 881-5191
   mpieja@goldmanismail.com
9 alittmann@goldmanismail.com
   jgreenblatt@goldmanismail.com
10 dwinnard@goldmanismail.com
   arima@goldmanismail.com
11 eross@goldmanismail.com
12 labendshien@goldmanismail.com

13 *Attorneys for Defendant Apple Inc.*

14 (Additional counsel listed in signature block)

15

UNITED STATES DISTRICT COURT
16 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

17

UNILOC USA, INC., et al.,	Case No. 3:18-cv-00358-WHA
18 Plaintiffs,	
19	**DEFENDANT APPLE INC.'S MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION**
20 v.	
APPLE INC.,	JUDGE: Hon. William Alsup
21	
22 Defendant.	DATE: Thursday, December 3, 2020 TIME: 8:00 a.m. COURTROOM: 12, 19th Floor JUDGE: Hon. William Alsup
23	

24

25

26

27

28

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

NOTICE OF MOTION

PLEASE TAKE NOTICE that on Thursday, December 3, 2020, at 8:00 a.m., in Courtroom 12 of the United States District Court located at 450 Golden Gate Avenue, San Francisco, California, 94102, before the Honorable William Alsup, Defendant Apple Inc. ("Apple") will and hereby does respectfully move this Court for an order granting Apple's Motion to Dismiss for Lack of Subject-Matter Jurisdiction.

STATEMENT OF RELIEF REQUESTED

Through this motion, Apple requests an order dismissing without prejudice the above-captioned action brought by Plaintiffs Uniloc USA, Inc. and Uniloc Luxembourg for lack of constitutional standing.

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

TABLE OF CONTENTS

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1

TABLE OF AUTHORITIES

2

Cases

28

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

Other Authorities

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

I.   INTRODUCTION

The issues of constitutional standing raised in this motion are not new to the Court. As Apple argued in several related cases in this District[1], Plaintiffs Uniloc USA, Inc. ("Uniloc USA") and Uniloc Luxembourg ("Uniloc Lux") (collectively, "Uniloc"), created these issues through a complex and tangled web of agreements with their secured lender, Fortress Credit Co LLC ("Fortress"). (*See* Apple's 10/25/18 Mot. to Dismiss, Dkt. No. 135, *Uniloc USA, Inc. and Uniloc Luxembourg, S.A. v. Apple Inc.*, Case No. 3:18-cv-00360-WHA (N.D. Cal.) ("-360 Dkt.").) The key to cutting through this tangled web remains the question the Court posed before: "whether or not Uniloc defaulted and cured its obligations to Fortress." (Dkt. No. 133 at 2.) If Uniloc defaulted and did not cure that default, as Apple argues, Fortress held the right to license Apple to the patent-in-suit at the time Uniloc filed its complaint. Fortress's sublicensing right, in turn, rendered Uniloc's exclusionary rights illusory, depriving Uniloc of constitutional standing and requiring dismissal of this action.

The first part of the question—whether Uniloc defaulted—is not disputed. Both parties agree to the facts constituting an "Event of Default" as defined under the parties' agreements. As to the second part, recent discovery sweeps away the basis for Uniloc's argument that a cure had occurred, and confirms that there was no cure.[2] In the Related Cases, Uniloc argued, and the Court initially agreed, that Uniloc had cured any Event of Default. (-360 Dkt. No. 158 at 6–7.) This finding "relie[d] on the [James] Palmer declaration to find that plaintiffs had in fact cured the alleged events of default to Fortress's reasonable satisfaction." (*Id.* at 7.) The Palmer declaration was Uniloc's sole basis for asserting that a cure had occurred.

Mr. Palmer, however, has now ████████████████████████████████

██

██

██

---

[1] Nos. 3:18-cv-00359, -360, -363, -365, and -572 (the "Related Cases"). For filings in the Related Cases, Apple cites to the -360 docket as representative of filings across the cases.

[2] The Court initially found, in related cases, that a cure had occurred. On reconsideration, the Court permitted Apple to take discovery on the issue and left open the "cure" question pending that discovery. (-360 Dkt. No. 204.)

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1 ██

2 ██

3 Other discovery makes clear why ███████████████████████████

4 ██

5 ██

6 ████████████████████████████████████ Unsurprisingly, Uniloc

7 could not (and did not) produce a single document to support a cure. Quite the opposite: it admitted

8 that "no one" from "Uniloc or Fortress was contemporaneously discussing 'default,' 'waiver,' or

9 'cure.'" (Dkt. No. 139 at 5.) And, contrary to its prior argument to this Court that its default could

10 have and in fact had been "cured," Uniloc told Judge Connolly of the District of Delaware: "If the

11 money doesn't come in by a certain date, there's no way that that fact can be changed." (Ex. C,

12 10/1/20 Hearing Tr. 27:11–17, *Uniloc USA, Inc. and Uniloc Luxembourg, S.A. v. Motorola Mobility,*

13 *LLC*, No. 17-1658 (CFC) (D. Del.).) [3]

14 In short, discovery has now shown that, contrary to what Uniloc previously represented,

15 Uniloc never in fact cured any Event of Default. As a result, at the time Uniloc sued Apple, nonparty

16 Fortress held an unfettered right to license Apple to the patent-in-suit. That right deprived Uniloc of

17 constitutional standing. Apple's Motion should be granted, and the case dismissed.

18 **II.   FACTUAL BACKGROUND**

19 The factual background has been set forth in detail in prior briefing in the Related Cases. (*See*

20 -360 Dkt. No. 135.) Apple provides a brief overview of the facts relevant here.

21 **A.   Uniloc USA And Uniloc Lux Grant Fortress A License To All Their Patents, Including The Right To Sublicense Third Parties**

22

23 Since 2014, Uniloc USA and Uniloc Lux have operated as patent-enforcement entities.

Needing money to pay for their litigation campaigns, they approached Fortress. On December 30,

24 2014, Uniloc USA and Uniloc Lux entered into agreements with Fortress that memorialized a loan

25

26

27 [3] In *Uniloc USA, Inc. and Uniloc Luxembourg, S.A. v. Motorola Mobility, LLC*, No. 17-1658 (D. Del.), Motorola filed a motion to dismiss for lack of subject-matter jurisdiction based on the same underlying facts regarding Uniloc's default of its obligations to Fortress. That motion is fully briefed and Judge Connolly has held oral argument. However, Motorola's motion does not address the new evidence regarding default and cure that is described in Apple's Motion here.

28

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1   of money to the Uniloc entities. These agreements included: (1) a Conformed Revenue Sharing and

2   Note and Warrant Purchase Agreement ("Revenue Sharing Agreement" or "RSA") (Ex. D); and (2)

3   a Patent License Agreement ("Fortress License") (Ex. E). The RSA was later amended three times,

4   with the final amendment occurring on May 15, 2017 ("Amendment" or "Third Amendment").

5   (Ex. F.)

6   As part of this financing arrangement, Uniloc USA and Uniloc Lux granted Fortress a broad

7   patent license. (Ex. D, RSA § 2.8.) This license granted Fortress "the right to grant sublicenses[] with

8   respect to the Patents" and applied to "all intellectual property of [Uniloc USA and Uniloc Lux],"

9   including the patent-in-suit. (*Id.* § 2.8, Appendix I A-7; Ex. G, Levy 9/21/18 Dep. 66:22–67:5; Ex.

10 H, Turner 10/8/18 Dep. 23:24–24:3.) The key language of the Fortress License provided:

11
12
13
14
15

> Subject to the terms and conditions herein and in the Purchase Agreement, Licensor hereby grants to Licensee a non-exclusive, transferrable*, **sub-licensable***, divisible, irrevocable, fully paid-up, royalty-free, and worldwide license to the Licensed Patents, including, but not limited to, the rights to make, have made, market, use, sell, offer for sale, import, export and distribute the inventions disclosed in the Licensed Patents and otherwise exploit the Licensed Patents in any lawful manner in ***Licensee's sole and absolute discretion*** solely for the benefit of the Secured Parties ("Patent License"), provided that ***Licensee shall only use the Patent License following an Event of Default***.

16 (Ex. E, § 2.1 (emphasis added).) Fortress could thus grant licenses to Uniloc's patents in its "sole and

17 absolute discretion" so long as the sublicense did not impose "financial obligations or restrictions"

18 on Uniloc USA or Uniloc Lux. (*Id.* § 2.2.)

19   There was only one restriction on Fortress's sublicense rights. The Fortress License provided

20 that "[Fortress] shall only use the Patent License following an Event of Default" (as defined in the

21 RSA). (Ex. E, § 2.1.) The RSA in turn defined "Event[] of Default" broadly to include the failure of

22 Uniloc USA or Uniloc Lux "to perform or observe any of the covenants or agreements contained in

23 Article VI." (Ex. D, § 7.1.2.) Thus, "Fortress was given a license upfront," and its rights automatically

24 vested upon an Event of Default. (Ex. C, -1658 10/1/20 Hearing Tr. 27:23–28:9 ("Once there's an

25 event of default, they can use it.").) Unlike other remedies available to Fortress in an event of default,

26 nothing in the RSA required Fortress to take any actions or steps before it could use its sublicensing

27 rights under the Fortress License. (*See id.* at 32:22–33:16; *cf.* Ex. D, §§ 7.2.2, 7.2.3 (requiring "notice

28 in writing" to Uniloc USA and Uniloc Lux before electing certain remedies).)

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

B. **Uniloc Triggers An Event Of Default On March 31, 2017 And Never Cures It**

On March 31, 2017—two months before Uniloc filed suit—an Event of Default occurred. Section 6.2.2 of the Revenue Sharing Agreement required Uniloc USA and Uniloc Lux to generate "at least $20,000,000 in Actual Monetization Revenues during the four fiscal quarter period ending on [March 31, 2017]." (Ex. D.) ██████████████████████████████

███

███████████████████████████████████████ Because Uniloc USA and Uniloc Lux failed to satisfy the covenant of Section 6.2.2, an Event of Default existed as of March 31, 2017. (Ex. D, §§ 7.1, 7.1.2.)

██

███

███

███

███

███

███

████████████████████████████████

On May 15, 2017, Uniloc and Fortress agreed to amend the RSA for a third time. (Ex. F.) By its express terms, the Amendment did not waive any Event of Default, nor did it change or remove the revenue requirement, or the consequences for failing to satisfy it. (*Id.*) Instead, the Amendment re-confirmed that all provisions of the RSA remained in full force and effect, including the revenue covenant, the definition of Event of Default, and Fortress's right to sublicense Uniloc's patents following an Event of Default. (*Id.*)

III. **PROCEDURAL BACKGROUND**

On May 26, 2017, Uniloc filed this action against Apple in the Eastern District of Texas. (Dkt. No. 1.) The case was transferred to this District upon Apple's motion, together with five other related cases: 3:18-cv-00359, -360, -363, -365, and -572.

/ / /

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1 Following transfer, Apple moved to dismiss this action on the grounds that the patent-in-suit

2 claimed patent-ineligible subject matter. (Dkt. No. 53.) The Court granted Apple's motion on May

3 18, 2018, and entered judgment accordingly. (Dkt. Nos. 99, 100.) Uniloc appealed. (Dkt. No. 101.)

4 While this case was on appeal, Apple obtained discovery from Uniloc in the Related Cases regarding

5 the ownership of rights in the patents-in-suit. (-360 Dkt. No. 123.) It was only then that Apple learned

6 the true division of rights in the patents-in-suit at the time of filing, as outlined in Section II above.

7 Apple filed a motion to dismiss on the grounds that Fortress's unfettered sublicensing right

8 deprived Uniloc of the exclusionary rights needed for constitutional standing. (-360 Dkt. No. 135.)

9 The Court initially denied Apple's motion because it found that Uniloc had "cured" any default prior

10 to filing suit. (-360 Dkt. No. 158 at 6–7.) Apple moved for reconsideration and sought discovery as

11 to whether a cure had, in fact, occurred. (-360 Dkt. No. 173.) Upon reconsideration, the Court

12 permitted Apple to take this discovery. (-360 Dkt. No. 204 at 1–2.) Because the Related Cases were

13 stayed, however, no discovery took place. (Dkt. No. 133.)

14 Because this case remained on appeal, Apple raised Uniloc's lack of standing with the Federal

15 Circuit. The Federal Circuit remanded this case "for the purpose of supplementing the record with

16 the documents pertaining to jurisdiction and resolving the presented jurisdictional issues in the first

17 instance." (8/30/19 Opinion, Dkt. No. 58 at 8, *Uniloc USA, Inc. and Uniloc Luxembourg, S.A. v.*

18 *Apple Inc.*, No. 2018-2094 (Fed. Cir.).) Following briefing from the parties, the Court ordered written

19 discovery on the issues of default and cure, among others. (Dkt. No. 133 at 2.) Discovery proceeded

20 in accordance with the Court's Order. In addition, the parties conducted relevant deposition discovery

21 in connection with other cases between them. With discovery now complete, Apple files this Motion

22 based on the new evidence that conclusively establishes that Uniloc's default was never cured and

23 that therefore Uniloc lacked Article III standing at the time this case was filed.

24 **IV.   LEGAL STANDARDS**

25 Apple's Motion relies on evidence outside of the pleadings and thus presents a "factual attack"

26 on subject-matter jurisdiction. *See Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). "When

27 the defendant raises a factual attack, the plaintiff must support her jurisdictional allegations with

28 'competent proof[]' . . . under the same evidentiary standard that governs in the summary judgment

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1   context. The plaintiff bears the burden of proving by a preponderance of the evidence that each of the

2   requirements for subject-matter jurisdiction has been met." *Id.* (internal citations omitted); *Sicom*

3   *Sys., Ltd. v. Agilent Techs., Inc.*, 427 F.3d 971, 976 (Fed. Cir. 2005) ("The party bringing the action

4   bears the burden of establishing that it has standing.") (citation omitted).

5   To establish subject-matter jurisdiction in a patent infringement action, a patent plaintiff must

6   establish that it holds the right to exclude the accused infringer from practicing the claimed invention.

7   *Luminara Worldwide, LLC v. Liown Elecs. Co.*, 814 F.3d 1343, 1348 (Fed. Cir. 2016). If an accused

8   infringer "has the ability to obtain . . . a license from another party with the right to grant it," then the

9   putative plaintiff "does not have an exclusionary right with respect to the alleged infringer and thus

10   is not injured by that alleged infringer." *WiAV Sols. v. Motorola, Inc.*, 631 F.3d 1257, 1266 (Fed. Cir.

11   2010); *Tech. Props. Ltd. LLC v. Canon Inc.*, No. C 14-3640 CW, 2016 WL 4447142, at *2 (N.D. Cal.

12   Aug. 24, 2016) ("[T]he exclusive licensee must be the only party from whom the defendant could

13   potentially obtain a license.") (citation omitted). This rule applies to patent owners as well as

14   licensees. *Morrow v. Microsoft Corp.*, 499 F.3d 1332, 1340–41 (Fed. Cir. 2007)*; see Azure Networks,*

15   *LLC v. CSR PLC*, 771 F.3d 1336, 1344 (Fed. Cir. 2014) ("[A] nonexclusive . . . licensee does not

16   have a legally protected interest conferred by the Patent Act. That same logic applies even if it is the

17   patent owner holding the nonexclusive right . . . .") (internal citation omitted), *vacated on other*

18   *grounds*, 135 S. Ct. 1846 (2015). If the plaintiff fails to show that it possessed Article III standing at

19   the time of filing, the suit must be dismissed. *Sicom*, 427 F.3d at 976.

20   **V.   UNILOC TRIGGERED AN EVENT OF DEFAULT AND NEVER CURED IT**

21   The subject-matter jurisdiction issue boils down to two questions: (1) did Uniloc trigger an

22   Event of Default under express terms of the RSA? and (2) did Uniloc cure or otherwise annul that

23   Event of Default? If Uniloc triggered an Event of Default and failed to cure it before filing suit,

24   Fortress held an unfettered right to license the patent-in-suit to any entity, including Apple. The

25   unambiguous terms of the RSA and new facts uncovered in discovery establish that this is precisely

26   what happened.

27   / / /

28   / / /

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

A.   Uniloc Triggered An Event Of Default Under The Express Terms Of The RSA

As to the Event of Default, the material facts are not in dispute. Between April 1, 2016, and March 31, 2017, Uniloc generated only ███████ in patent monetization revenue. ████████

██

███████ The express and unambiguous terms of the RSA, however, required Uniloc to generate $20 million in revenue over this four-quarter period. (Ex. D, § 6.2.2.) The RSA explicitly defined the failure to generate this revenue as an "Event of Default." (*Id*. § 7.1.2.) Thus, Uniloc's failure to generate the revenue required by Section 6.2.2 of the RSA constituted an "Event of Default," by definition, under the RSA.

Uniloc does not and cannot contest any of these facts. Nor does it claim that the RSA is ambiguous in any way. Instead, Uniloc has attempted to evade the express terms of the RSA by pointing to hindsight testimony about what the parties believed in the form of the Palmer Declaration, or else arguing that Fortress took no action to establish an event of default and thus none existed. Uniloc's arguments contradict the RSA and should be rejected.

1)   Parol Evidence Cannot Rewrite The Unambiguous Term "Event of Default"

Relying on the Palmer Declaration, Uniloc has suggested that, contrary to the definition of "Event of Default" in the RSA, the parties did not intend for Uniloc's failure to generate the minimum revenue required by Section 6.2.2 to trigger an Event of Default. (*See* Ex. J, ¶ 10 (describing the revenue minimums as "no longer of significance").) Uniloc's attempt to rewrite the RSA in this way should be rejected.

As an initial matter, the Palmer Declaration is parol evidence and cannot be used to argue that the parties' intent differed from the intent manifested by their unambiguous contract. The RSA contains a merger clause that bars the use of such evidence: "This Agreement and the Documents constitute the entire understanding of the parties with respect to the subject matter hereof and thereof . . . ." (Ex. D, § 9.9.) And under New York law, which governs the RSA, such a merger clause "bar[s] the introduction of extrinsic evidence to alter, vary or contradict the terms of [a contractual] writing . . . ." *Jarecki v. Shung Moo Louie*, 745 N.E.2d 1006, 1009 (Ct. App. N.Y. 2001) (citation omitted). The RSA unambiguously defines the failure "to perform or observe any of the covenants or

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1 agreements contained in Article VI," which includes Section 6.2.2, as an Event of Default. (Ex. D,

2 §§ 7.1, 7.1.2 ("Each of the following events is referred to as an 'Event of Default'").) Thus, the Palmer

3 Declaration cannot be used to contradict the RSA's explicit definition of Event of Default. *See*

4 *Immunex Corp. v. Sandoz Inc.*, 964 F.3d 1049, 1060 (Fed. Cir. 2020) (rejecting reliance on testimony

5 when interpreting parties' intent from unambiguous contract).

6 　　　　Mr. Palmer's statements that Fortress did not know or believe Uniloc to be in default are

7 similarly inadmissible as parol evidence. They are also irrelevant. (Ex. J, ¶ 11.) The RSA deemed an

8 Event of Default to exist based on the occurrence of certain events and contained no terms requiring

9 Fortress to know or believe that an Event of Default had occurred. (Ex. D, § 7.1.) "As a sophisticated

10 [lender] who negotiated the Agreement with counsel, [Fortress] had to look no further than to the

11 plain language of the Agreement to know that an Event of Default had occurred . . . ." *Gaia House*

12 *Mezz LLC v. State St. Bank & Tr. Co.*, 720 F.3d 84, 92 (2d Cir. 2013). Further, the RSA recognizes

13 that Events of Default exist prior to, and separately from, the parties' knowledge of such events. (*See*

14 *id*. § 6.5.1.2 (requiring Uniloc to notify Fortress "promptly upon acquiring knowledge" that an Event

15 of Default existed).) It is thus the RSA that defines whether an Event of Default has occurred, not

16 Fortress's subjective beliefs or feelings.

17 　　　　2)　The Drafting History Of The RSA Confirms That Uniloc Caused An Event Of
18 　　　　　　　Default

19 　　　　Even if Mr. Palmer's testimony on the existence of a default were not improper parol

20 evidence, it should still be disregarded as contrary to the drafting history of the RSA. Mr. Palmer

21 testified that ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮

▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮

22 ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮ But Mr. Palmer admits ▮▮▮▮▮▮

23 ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮

24 ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮

25 ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮

26 ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮

27 ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮

28 ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1 ██

2 ██

3 ██

4 ██

5 ██

6 ██

7 ██

8 ██

9 ██

10 ███

11 ███

12 ████████████████████████████

13 ░░░░███

14 ███

15 ███

16 ███

17 ███

18 ███

19 ███

20 ██

21   3) <u>Fortress's Failure To Act On Its Rights Does Not Negate The Event Of Default</u>

22   During his deposition, Mr. Palmer offered ███████████████

23 ███

24 ███████████████████████ Uniloc appears to have adopted this theory in other litigation regarding this

25 issue. For example, in *Uniloc USA v. Motorola Mobility*, Uniloc argued to Judge Connolly of the

26 District of Delaware that Fortress did not take any "procedural steps to implement an event of default"

27 and thus no event of default occurred. (Ex. C, -1658 10/1/20 Hearing Tr. 27:18–22.) Uniloc's latest

28 argument, like its previous ones, contradicts the express terms of the RSA and should be rejected.

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1   The RSA is clear. Under Section 7.1 and 7.1.2, the "fail[ure] to perform" under Section 6.2.2

2 "is referred to as an 'Event of Default'" by definition. (Ex. D.) The Fortress License permits Fortress

3 to sublicense the patent-in-suit in its sole and absolute discretion following "an Event of Default."

4 (*Id.* § 2.8; Ex. E, Fortress License § 2.1.) Nowhere does the RSA spell out any "procedural steps"

5 that require Fortress to "put" Uniloc in default. Instead, Fortress's unfettered sublicensing right vests

6 automatically by operation of law once a defined "Event of Default" occurs.

7   Uniloc has appeared to concede that no "procedural steps" were required in order for an event

8 of default to occur. At oral argument before Judge Connolly, Uniloc admitted that Fortress had the

9 right and power to grant sublicenses immediately upon occurrence of an event of default. (Ex. C, -

10 1658 10/1/20 Hearing Tr. 28:5–8 ("THE COURT: Okay. So that means once there's an event of

11 default, they can use the license. Right? MR. FOSTER: Once there's an event of default, they can

12 use it.").) And Judge Connolly likewise indicated that this was the proper interpretation of the RSA:

13 "Section 2.8 is pretty clear on that it seems. They had the license. . . . And then all it says is, they

14 don't use it following an event of default. That means if there's an event of default, once it occurs,

15 they can use it." (*Id.* at 33:7–16.)

16   The remainder of the RSA confirms that Fortress need not take any action for an "Event of

17 Default" to occur and its unfettered sublicensing rights to vest. Other remedies following an Event of

18 Default, such as acceleration of the outstanding loan balance, required Fortress to provide "notice in

19 writing" in order to elect them. (Ex. D, RSA § 7.2.2.) But no such election is required for Fortress's

20 sublicensing right. Likewise, the RSA states that Fortress's "delay or omission" in exercising its rights

21 cannot be used to show it has waived those rights. (*Id.* § 9.4.2; *see also id.* § 7.4.2 (Uniloc agreeing

22 to waive "any requirement of diligence or promptness on the part of [Fortress] in the enforcement of

23 its rights under this Agreement.").) This again shows that Fortress's failure to do something upon

24 occurrence of a default cannot be used to negate the existence of that default. Fortress specifically

25 bargained for a sublicensing right that vested automatically upon occurrence of an Event of Default,

26 and it bargained for language that would ensure that its silence could not be used to waive or nullify

27 those rights. Fortress may now regret having structured its rights in this way, but it cannot disavow

28 the unambiguous terms it asked for.

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1   At bottom, Uniloc failed to generate $20 million between April 1, 2016, and March 31, 2017,

2   as required by the express terms of the RSA. Thus, Uniloc triggered an Event of Default on March

3   31, 2017, and no amount of extrinsic evidence or hindsight testimony can change that fact.

4   **B.   Uniloc Never Cured Or Otherwise Annulled Any Event Of Default**

5   Because an Event of Default occurred as of March 31, 2017, it was "deemed to exist and be

6   continuing for all purposes of this Agreement until" certain events took place. (Ex. D, RSA § 7.3.)

7   Under the terms of the RSA, only three events could remove an Event of Default from existence:

8   1.   Fortress "waive[s] such Event of Default in writing." (*Id.* § 7.3(x).)

9   2.   The parties agree to an amendment to the RSA "which by its express terms cures such
     Event of Default." (*Id.* § 7.3(z).)

10

11   3.   Uniloc "cure[s] [the] Event of Default to [Fortress's] reasonable satisfaction."
     (*See* Dkt. No. 139 at 4; Ex. D, RSA § 7.3(y).)

12   It is undisputed that the first two scenarios did not occur. Fortress never waived any default in writing,

13   and Uniloc has never offered any evidence that it did so. (*See* Dkt. No. 139 at 4; ███████████████

14   ████████████.) Nor is there any provision in the May 15, 2017 amendment to the RSA that cures

15   any Event of Default "by its express terms," and Uniloc has not and cannot argue otherwise. █████

16   ███████████████████████

17   Instead, Uniloc focuses all of its arguments on the third possibility: a "cure." At the time the

18   Court addressed the "cure" issue in the Related Cases, the only evidence of record was the declaration

19   of James Palmer. (Ex. J.) The Court expressly stated that it relied on that declaration to find that a

20   cure occurred. (-360 Dkt. No. 158 at 7.) Now, however, new evidence uncovered in subsequent

21   discovery establishes that no cure in fact occurred.

22   1)   New Evidence Proves No Cure Occurred Or Could Have Occurred

23   The first and most important piece of new evidence that no cure occurred comes from Mr.

24   Palmer's deposition testimony. Contrary to his prior declaration, Mr. Palmer now admits █████████

25   ███████████████

26   ██

27   ████████████████

28   ████████████████████████

1 ██

2 ██

3 ██

4 ██

5 ██

6 ██

7 ██

8 ██

9 ████████████████████████████████ But "[c]uring a default commonly

10 means taking care of the triggering event and returning to pre-default conditions." *In re Taddeo*, 685

11 F.2d 24, 26–27 (2d Cir. 1982); *see also Bank of New York Mellon Trust Co., Nat'l Ass'n v. Solstice*

12 *ABS CBO II, Ltd.*, 910 F. Supp. 2d 629, 649 (S.D.N.Y 2012). "Dictionaries agree that curing connotes

13 correction, elimination, or rectification." *SEE, Inc. v. See Concept SAS*, No. 16-13261, 2017 WL

14 768616, at *4 (E.D. Mich. Feb. 28, 2017) (citing *Merriam-Webster's Collegiate Dictionary* 284 (10th

15 ed. 1999) ("to deal with in a way that eliminates or rectifies"); *The American Heritage Dictionary*

16 323 (11th ed. 2003) ("to get rid of" or "to remedy")). █████████████████████

17 ██

18 ████████████████████████████████ The prior finding that a "cure" exists relied

19 on testimony that has since been contradicted, disavowed, and discredited, and should now be thrown

20 out.

21   The second piece of new evidence that no cure occurred comes from Uniloc's admissions that

22 it took no action regarding its event of default and thus could not have "cured" it. The RSA gives no

23 special meaning to the word "cure" and thus its commonly understood meaning governs. To "cure"

24 any Event of Default, Uniloc would need to "tak[e] care of the triggering event" or "correct[],

25 eliminat[e], or rectif[y]" that event. *Taddeo*, 685 F. 2d at 26–27; *SEE*, 2017 WL 768616 at *4. Here,

26 Uniloc did nothing at all to rectify, correct, or eliminate the Event of Default caused by its revenue

27 shortfall. (Ex. B, Turner 10/1/20 Dep. 87:22–88:1.) It made no attempt to "make up" for the shortfall.

28 In fact, ██

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1 ███ *Cf. Bakalis v.*

2 *Bakalis*, 88 N.Y.S.3d 899, 900 (N.Y. App. Div. 2018) ("[T]he defendant . . . cured his default in

3 payment . . . by making the required payment . . . on the cure date fixed by the plaintiff."). Tellingly,

4 Uniloc produced no documents or evidence showing what actions it took to cure, when it took them,

5 and how it effected a cure of its revenue shortfall. (*See id*. at 214:7–9 (refusing to provide a date on

6 which Uniloc cured any Event of Default).) This confirms that, as Uniloc admitted, "no one" at

7 Fortress or Uniloc was even discussing a waiver, cure, or default, or "wiping the slate clean"—much

8 less doing anything to effect one. (Dkt. No. 139 at 5.) By Uniloc's own admission and failure to

9 produce documents, then, Uniloc never cured any Event of Default.

10   Uniloc previously argued that, so long as Fortress was reasonably satisfied with Uniloc

11 overall, any Event of Default would be "cured." But this argument misinterprets Section 7.3(y) of the

12 RSA. Under this section, Fortress's "reasonable satisfaction" must be with Uniloc's efforts to "cure,"

13 not with Uniloc's performance generally. (Ex. D, § 7.3(y).) In fact, Judge Connolly identified this

14 same problem with Uniloc's argument. (Ex. C, -1658 10/1/20 Hearing Tr. 26:12–16 ("But still,

15 you've got to cure it. I mean, we'll deal with that to their reasonable satisfaction. Let's deal first with

16 the, you've got to cure it. So how do you cure something by not doing anything?").) By its own terms,

17 Section 7.3(y) contemplates that there must first be a cure before Fortress can express reasonable

18 satisfaction with it. (*See id.* at 25:22–23 ("THE COURT: How do you cure a default by not doing

19 anything?").) Because Uniloc took no action at all to rectify its Event of Default, there was nothing

20 for Fortress to have "satisfaction" with, and nothing for the Court to analyze to determine whether

21 that satisfaction was "reasonable."

22   Moreover, Uniloc's interpretation of Section 7.3(y) strips it of all meaning. According to

23 Uniloc, "cured to Fortress's reasonable satisfaction" can also mean "*defaulted* to Fortress's

24 reasonable satisfaction" or "*not cured*, but to Fortress's reasonable satisfaction." This makes no

25 sense—Section 7.3(y) cannot be read to include both its plain meaning and the opposite of that

26 meaning. Further, Section 7.3 already set forth the two ways that Fortress could annul an Event of

27 Default where Fortress is satisfied but Uniloc has not done, or cannot do, anything to rectify or

28 eliminate that default: (1) execute a written waiver under Section 7.3(x), or (2) effect a cure by

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1 amendment under Section 7.3(z). But Fortress did not avail itself of these two options. Uniloc cannot

2 now seek to rewrite the unambiguous language of the third one.

3   Uniloc's argument that Fortress's "reasonable satisfaction" alone is a cure, even without any

4 effort to cure or rectify the default, also contradicts the RSA's prohibition on implied waivers. (Ex. D,

5 § 9.4.2.) When Uniloc argues that the Event of Default should not be deemed to exist because Fortress

6 was satisfied and the parties continued with business as usual, it is arguing for an implied waiver

7 based on a course of dealing. The RSA, however, explicitly forbids the use of a course of dealing to

8 effect an implied waiver. (*Id.*) Uniloc cannot vitiate Section 9.4.2 by repackaging its course of dealing

9 argument as a "cure" argument.

10   Finally, the third piece of new evidence that Uniloc's default was not cured is its concession

11 that the Event of Default triggered by its revenue shortfall ***could not be cured***. Uniloc told Judge

12 Connolly that its default was incurable: "If the money doesn't come in by a certain date, there's no

13 way that that fact can be changed." (Ex. C, -1658 10/1/20 Hearing Tr. 27:11–17, 28:16–29:6 (noting

14 that some defaults by their nature may not be curable where an obligation "has to be met by [a] certain

15 date and that date passes and it hasn't been met," and thus instead require waiver or other annulment).)

16 Uniloc's concession comports with the language of the RSA. The RSA provides no cure period for

17 any Events of Default. (Ex. D, § 7.3.) Nor does it provide any indication as to how Uniloc could have

18 cured its failure to generate $20 million in revenue by March 31, 2017, after that deadline has passed.

19 Because Uniloc itself concedes that it could not have cured the Event of Default caused by its revenue

20 shortfall on March 31, 2017, the Court should now find that no cure occurred.

21   2) <u>Fortress's Execution Of The Third Amendment Does Not Constitute A Cure</u>

22   Apart from the Palmer Declaration, the only other evidence Uniloc has used to support a

23 "cure" is the act of executing the Third Amendment to the RSA on May 15, 2017. (Ex. J, Palmer

24 Decl. ¶¶ 10, 12.) But the execution of this amendment does not and cannot provide evidence of a

25 cure.

26   ***First***, the execution of the Third Amendment cannot be found to cure an Event of Default

27 because such a finding would contradict the RSA. Under the RSA, an amendment can cure an Event

28 of Default only if it "by its express terms cures such Event of Default." (Ex. D, § 7.3(z).) The Third

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1 Amendment does not do so. Section 7.3(z) would be rendered meaningless if an amendment which

2 does **not** cure an Event of Default by its express terms can still cure an Event of Default. *See Bank of*

3 *New York Mellon*, 910 F. Supp. 2d at 648–49 ("[A] contract should be construed so as to give full

4 meaning and effect to all of its provisions.") (citation and internal quotation marks omitted).

5   ***Second***, the Third Amendment not only omits express language of cure, it contains express

6 language disavowing any waiver or relinquishment of rights, stating: "The execution, delivery and

7 effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy . . . nor

8 constitute a waiver of any provision of the Agreement or any Document." (Ex. F, § 4.) This language

9 expresses a clear intent that the execution of the Amendment is not to be used as a basis to conclude

10 that Fortress has relinquished any of its rights.

11   ***Third***, Fortress's decision to lend additional money to Uniloc by means of the Third

12 Amendment is not evidence of a cure because it was in Fortress's financial interest to continue lending

13 money to Uniloc despite the Event of Default. █████████████████████████

14 ███

15 ███

16 ███

17 ███

18 ███

19 ███

20 ███

21 ███████████████████████████

22   The record before the Court now is completely different than the one before the Court in the

23 Related Cases two years ago. The current record not only establishes that the Event of Default was

24 never cured as a matter of fact, but that it could not have been cured as a matter of law. The Court

25 should now find that Uniloc did trigger an Event of Default and never cured it.

26 **VI.**   **FORTRESS'S UNFETTERED SUBLICENSING RIGHT DEPRIVED UNILOC OF STANDING TO SUE**

27   Because Uniloc triggered an event of default and failed to cure it, Fortress was automatically

28 vested with the right to grant sublicenses in its "sole and absolute discretion." (Ex. E, Fortress License

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

§ 2.1.) Fortress possessed that right at the time Uniloc acquired the patent-in-suit on May 26, 2017, and its rights automatically attached upon Uniloc's acquisition of that patent. (*See* Ex. G, Levy 9/21/19 Dep. 66:22–67:5, 71:21–72:1.) As a result, Fortress held the right to sublicense the patent-in-suit to Apple at the time Uniloc filed suit. Fortress's possession of this right is fatal to Uniloc's constitutional standing at the time of filing.

If an accused infringer "has the ability to obtain . . . a license from another party with the right to grant it," then the putative plaintiff "does not have an exclusionary right with respect to the alleged infringer and thus is not injured by that alleged infringer." *WiAV Solutions*, 631 F.3d at 1266. Here, neither Uniloc Lux nor Uniloc USA had the right to exclude Apple from practicing the patent-in-suit. Fortress, in its sole and absolute discretion, held the right to license Apple at any time, and neither Uniloc Lux nor Uniloc USA had any ability to prevent Fortress from exercising that right. Because Fortress had the right to sublicense Apple to the patent-in-suit, both Uniloc plaintiffs lacked constitutional standing to sue. *See Luminara Worldwide*, 814 F.3d at 1348 ("If [the patentee] could . . . license any entity . . . , [the licensee] would not have had exclusionary rights to the asserted patents."); *Acceleration Bay LLC v. Activision Blizzard, Inc.*, No. CV 16-453-RGA, 2017 WL 3668597, at *3 (D. Del. Aug. 24, 2017) (third party's ability to license the accused infringers deprived plaintiff of standing to sue).

The fact that Uniloc Lux purported to grant Uniloc USA an "exclusive licensee" does not change the result. As of May 26, 2017, Fortress already possessed the right to grant sublicenses to any patents owned by Uniloc Lux because the Event of Default had already occurred. Thus, as of May 26, 2017, Uniloc Lux did not itself possess an exclusive right to license the patent-in-suit because Fortress could license any entity it so chose and Uniloc Lux could not stop it from doing so. Because "an owner or licensee of a patent cannot convey that which it does not possess," *Prima Tek II, L.L.C. v. A-Roo Co.*, 222 F.3d 1372, 1382 (Fed. Cir. 2000) (citation omitted), Uniloc Lux could not convey exclusive rights to Uniloc USA. In other words, Uniloc Lux could not grant Uniloc USA "exclusive" rights in the patent-in-suit because Uniloc Lux itself could not "promise that others shall be excluded from practicing the invention within [the relevant] territory," *Rite-Hite Corp. v. Kelly Co., Inc.*, 56 F.3d 1538, 1552 (Fed. Cir. 1995) (citation omitted).

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1   As a result of the Fortress License and Uniloc Lux's license to Uniloc USA, the division of

2   rights in the patent-in-suit at the time this case was as filed was as follows:

Entity	Rights Held	Rights Not Held
Uniloc Lux	Legal title only	No right to practice or sublicense No right to exclude others from practicing or prevent Uniloc USA or Fortress from sublicensing
Uniloc USA	Non-exclusive right to practice and sublicense	No right to exclude others due to Fortress's sublicensing right
Fortress	Non-exclusive right to practice and sublicense	No right to exclude others from practicing invention

Neither Uniloc Lux nor Uniloc USA held the exclusionary rights necessary for Article III standing at

the time of filing, and thus the Court must dismiss for lack of subject-matter jurisdiction.

In its Renewed Motion, Uniloc relies extensively on the Federal Circuit's decision in *Lone Star Silicon Innovations LLC v. Nanya Technology Corp.*, to argue that it possessed the exclusionary rights necessary to file suit. 925 F.3d 1225 (Fed. Cir. 2019). (Dkt. No. 158 at 4–6.) As explained in Apple's Opposition to Uniloc's Renewed Motion, the holding in *Lone Star* that Uniloc cites is inapposite because the present case presents an issue of constitutional standing, as distinct from the "statutory" standing issue raised in *Lone Star*. (Dkt. No. 163 at 1.) In fact, to the extent *Lone Star* does discuss constitutional standing, it re-affirms the principle that a third party's unfettered right to sublicense an accused infringer can deprive a patent plaintiff of constitutional standing. In *Lone Star*, third party AMD had the right, in its sole discretion, to grant sublicenses to so-called "unlisted entities." 925. F.3d at 1231–32 ("[I]t is AMD who decides whether Lone Star can challenge or indulge infringement with respect to *unlisted* targets."). Thus, as to "unlisted" entities, the Federal Circuit determined that Lone Star's right to sue was "illusory" because "AMD can grant a sublicense and negate the lawsuit." *Id.* (citing *Speedplay, Inc. v. Bebop, Inc.*, 211 F.3d 1245, 1251 (Fed. Cir. 2000)). Critically, however, the defendants in *Lone Star* were not "unlisted entities" who could obtain a license from AMD. *Id.* Because AMD could not license these defendants, Lone Star possessed the necessary exclusionary rights to establish Article III standing to sue as to those entities. *Id.* at 1234 (citing *WiAV* for the proposition that a party "may have standing to sue some parties and not others.").

/ / /

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1   Like AMD in *Lone Star*, Fortress is the one "who decides whether [Uniloc] can challenge or

2   indulge infringement" because it held the right to license any entity it wants and thereby render

3   Uniloc's right to sue "illusory." *Id.* at 1231–32. But unlike AMD's sublicensing right, which was

4   limited to "unlisted" entities and did not extend to the defendants, Fortress's sublicensing right is not

5   so limited and extends to Apple. Thus, Apple is in the same position as the "unlisted entities" who

6   the *Lone Star* plaintiff lacked the right to exclude. *Id*. *Lone Star* thus confirms that Apple's Motion

7   should be granted and the case dismissed.

8   **VII.   UNILOC'S LACK OF CONSTITUTIONAL STANDING REQUIRES DISMISSAL**

9   The Federal Circuit has warned parties about the potential standing consequences of dividing

10   up patent rights: "While parties are free to assign some or all patent rights as they see fit based on

11   their interests and objectives, this does not mean that the chosen method of division will satisfy

12   standing requirements." *Morrow*, 499 F.3d at 1341 n.8. Following *Morrow*, courts have recognized

13   that it is possible for a licensor and licensee to agree on a "contractual division of patent rights [that]

14   may have the effect of defeating standing as to all relevant parties." *Fairchild Semiconductor Corp.*

15   *v. Power Integrations, Inc.*, 630 F. Supp. 2d 365, 372–73 (D. Del. 2007); *see also Luminara*, 814

16   F.3d at 1348 ("If Disney Enterprises could indeed license any entity to manufacture and sell candles

17   having Artificial Flame Technology, Candella would not have had exclusionary rights to the asserted

18   patents."). Here, Uniloc and Fortress are sophisticated entities who intentionally granted an unfettered

19   sublicensing right to Fortress as a condition for financing. They may not have appreciated the full

20   legal ramifications of that choice, and may now regret their decision in hindsight. But buyers' remorse

21   is not (and has never been) a basis to rewrite an unambiguous contract and thereby disregard

22   constitutional standing requirements.

23   Instead, the consequences flowing from Uniloc's and Fortress's chosen division of rights fall

24   on the parties in the best position to fix it: Uniloc and Fortress. If, as Uniloc claims, Fortress were so

25   pleased that it would have been willing to waive Uniloc's default in writing, as the RSA requires, it

26   would have been a simple matter for Uniloc to have sought and obtained such a waiver before filing

27   suit. (*See* Ex. D, § 7.3(x).) Or, if the revenue requirement were truly "no longer of significance" (Ex.

28   J, Palmer Decl. ¶ 10), Uniloc and Fortress could easily have amended the RSA to remove Section 6.2

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1 and cure any past defaults by express written amendment before filing suit (*Id.* § 7.3(z)). Or, if they

2 failed to take these steps before filing, they could have dismissed this suit, taken the steps needed to

3 fix their division of rights, and re-filed. *See Paradise Creations, Inc. v. UV Sales, Inc.*, 315 F.3d 1304,

4 1310 (Fed. Cir. 2003). Or they could have avoided this problem from the outset by restricting

5 Fortress's sublicensing rights such that it could not license Apple, or requiring Fortress to take some

6 affirmative step before its unfettered sublicensing right would vest, similar to how other remedies in

7 the Event of Default required Fortress to provide written notice first. (*Cf.* Ex. D, RSA §§ 7.2.2, 7.2.3.)

8   Uniloc and Fortress took none of these steps, and only have themselves to blame for their

9 predicament. *See Gaia House*, 720 F.3d at 94 ("The 'contracted-for financial consequence of [the

10 parties'] own failure to do that which [they] promised to do' is not a forfeiture.") (citations omitted).

11 Because Uniloc lacked the right to exclude Apple from practicing the patent-in-suit when it filed this

12 case, it lacked Article III standing to bring this suit. The case should now be dismissed for lack of

13 constitutional standing.

14

15 DATED: October 22, 2020   Respectfully submitted,

16   */s/ Doug Winnard*
                                      Michael T. Pieja (CA Bar No. 250351)

17   Alan E. Littmann (*pro hac vice*)
                                      Jennifer Greenblatt (*pro hac vice*)

18   Doug Winnard (CA Bar No. 275420)
                                      Andrew J. Rima (*pro hac vice*)

19   Emma C. Ross (*pro hac vice*)
                                      Lauren Abendshien (*pro hac vice*)

20   GOLDMAN ISMAIL TOMASELLI
                                      BRENNAN & BAUM LLP

21   200 South Wacker Dr., 22nd Floor
                                      Chicago, IL 60606

22   Tel: (312) 681-6000
                                      Fax: (312) 881-5191

23   mpieja@goldmanismail.com
                                      alittmann@goldmanismail.com

24   jgreenblatt@goldmanismail.com
                                      dwinnard@goldmanismail.com

25   arima@goldmanismail.com
                                      eross@goldmanismail.com

26   labendshien@goldmanismail.com

27   Kenneth Baum (CA Bar No. 250719)
                                      GOLDMAN ISMAIL TOMASELLI

28   BRENNAN & BAUM LLP

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

429 Santa Monica Boulevard, Suite 710
Santa Monica, CA 90401
Tel: (310) 576-6900
Fax: (310) 382-9974
kbaum@goldmanismail.com

Attorneys for Defendant Apple Inc.

DEFENDANT APPLE INC.'S MOTION TO DISMISS
FOR LACK OF SUBJECT-MATTER JURISDICITION

20

CASE NO. 3:18-CV-00358-WHA

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

PROOF OF SERVICE

The undersigned hereby certifies that a true and correct copy of **DEFENDANT APPLE INC.'S MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION** has been served on October 22, 2020, to all counsel of record who are deemed to have consented to electronic service.

/s/ Doug Winnard
Doug Winnard (CA Bar No. 275420)

DEFENDANT APPLE INC.'S MOTION TO DISMISS
FOR LACK OF SUBJECT-MATTER JURISDICITION

21

CASE NO. 3:18-CV-00358-WHA